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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 14.09.2021

Delivered on : 18.11.2021

CORAM:

THE HONOURABLE MRS.JUSTICE R.THARANI

C.M.A(MD) Nos.719 and 720 of 2014

C.M.A(MD) No.719 of 2014

Esakkiammal

... Petitioner/Appellant

Vs.

1.Sainudeen

2.The New India Assurance Co. Ltd.,

through its Branch Manager,

Kasturba Building,

M.C.Road, Kottarakkara,

Pulamon, Kerala - 691 531. ... Respondents/ Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree made in M.C.O.P.No.274 of 2012, dated 18.09.2012 on the file of the Motor Accident Claims Tribunal - IV Additional District Court, Tirunelveli.

For Appellant : Mr.T.Selvakumaran

For R2 : Mr.K.Murugesan

For R1 : No appearance

C.M.A(MD) No.720 of 2014

Muthukumar

... Petitioner/Appellant

Vs.

1.Sainudeen

2.The New India Assurance Co. Ltd.,

through its Branch Manager,

Kasturba Building,

M.C.Road,

Kottarakkara,

Pulamon, Kerala - 691 531.

... Respondents / Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree made in M.C.O.P.No.275 of 2012, dated 18.09.2012 on the file of the Motor Accident Claims Tribunal - IV Additional District Court, Tirunelveli.



For Appellant : Mr.T.Selvakumaran
For R2 : Mr.K.Murugesan
For R1 : No appearance

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COMMON JUDGMENT

C.M.A.(MD)No.719 of 2014 is filed against the award, dated 18.09.2012, in M.C.O.P.No.274 of 2012, on the file of the Motor Accident Claims Tribunal - IV Additional District Court, Tirunelveli.

2. C.M.A.(MD)No.720 of 2014 is filed against the award, dated 18.09.2012, in M.C.O.P.No.275 of 2012, on the file of the Motor Accident Claims Tribunal - IV Additional District Court, Tirunelveli.

3. The appellants in both the appeals herein are the claimants, the respondents herein are the respondents in the original claim petitions. Since both the M.C.O.P.Nos.274 of 2012 and 275 of 2012 were filed before the IV Additional District Court, Tirunelveli, claiming compensation arising out of the same accident, a common judgment was pronounced by the Tribunal.

4. Brief substance of the petition, in M.C.O.P.No. 274 of 2012, is as follows:

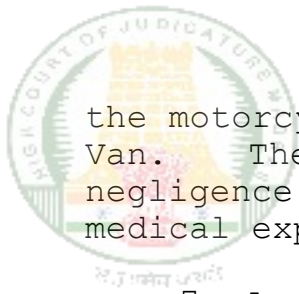
On 26.04.2011, at about 3.30 p.m., when the petitioner/ Esakkiammal was travelling as a pillion rider in a new unregistered motor cycle that was ridden by her husband, viz., Muthukumar, a 407 Van bearing Registration No.KL-02-V-6862 that belonged to the first respondent was driven by its Driver in a rash and negligent manner, dashed against the two wheeler and both the petitioner and her husband / Muthukumar sustained injuries. The petitioner claimed a sum of Rs.7,00,000/- as compensation.

5. Brief substance of the petition, in M.C.O.P.No. 275 of 2012, is as follows:

The petitioner/Muthukumar was the rider of the two wheeler. He sustained injuries in the accident and he claimed a sum of Rs.7,00,000/- as compensation.

6. Brief substance of the counter filed by the second respondent in both the petitions, in M.C.O.P.Nos.274 of 2012 and 275 of 2012, is as follows:

The manner of accident as narrated in the petitions is wrong. The first respondent vehicle Driver drove the vehicle in a careful and cautious manner. It was the petitioner / Muthukumar, who rode



the motorcycle in a rash and negligent manner and dashed against the Van. The petitioner / Muthukumar is liable for contributory negligence. The age, income, profession, injuries, disability and medical expenses are to be proved by the petitioners.

7. A joint Trial was conducted in both the petitions. On the side of the petitioners / claimants, three witnesses were examined and eleven documents were marked. On the side of the second respondent, one witness was examined and two documents were marked.

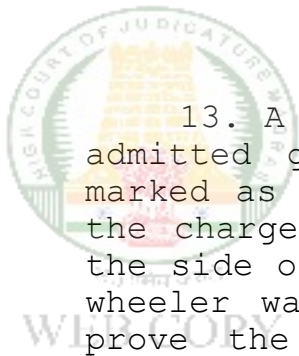
8. After considering both sides, the Tribunal awarded a sum of Rs.58,000/- for the claimant/Esakkiammal in M.C.O.P.No.274 of 2012. The Tribunal, after deducting 50% towards contributory negligence and has awarded a sum of Rs.40,500/- for the claimant / Muthukumar in M.C.O.P.No.275 of 2012. Against the award, the appellants / claimants have filed these Civil Miscellaneous Appeals for enhancement of compensation.

9. On the side of the appellant, it is stated that the Tribunal failed to consider that a criminal case was registered against the Driver of the Van and the Tribunal ought not to have fixed contributory negligence. The Tribunal failed to consider that the claimants are Folk Dancers and they are not able to continue their profession. The Tribunal ought to have fixed the loss of income by applying multiplier method. The award under various heads is to be enhanced.

10. On the side of the appellant, it is further stated that the appellants sustained fracture, the Driver of the van paid fine before the Criminal Court and there is no necessity to fix contributory negligence on the rider of the two wheeler. It is for the driver of the heavy vehicle to be more cautious.

11. To substantiate this, the learned counsel for the appellant relied upon a judgment of this Court reported in **2008 (2) TNMAC-217 [Rani and others V. M.D., T.N.S.T.C., Ltd., Vellore]**, wherein, it is stated that "Driver of bus, who is on the wheels of heavy vehicle owed a duty of care to other road users. Failure to take such care, the accident was due to rash and negligent driving of bus Driver".

12. On the side of the second respondent /Insurance Company, it is stated that the accident took place on the southern side of the road, that is on the right side of the two wheeler. The two wheeler was not registered and the Driver of the two wheeler was not having driving licence. The negligence was on the side of the rider of the two wheeler. It was wrong on the part of the van Driver, to have admitted guilty. The criminal Court records are not relevant to fix liability by the Tribunal.



13. A perusal of the records reveals that the Driver of the van admitted guilty before the Criminal Court and the judgment was marked as Ex.P6. Copy of the F.I.R was marked as Ex.P1. Copy of the charge sheet was marked as Ex.P5. Ex.R1 and R2 were marked on the side of the respondents. It is stated that the rider of the two wheeler was not having driving licence. No document was filed to prove the case. Hence, it is decided that the Van driver is responsible for the accident and that the owner of the Van and the insurer of the Van are liable to pay compensation.

14. On the side of the appellant / Esakkiammal, it is stated that the monthly income is to be fixed at least at Rs.6,000/- per month. The compensation for each percentage of disability is to be enhanced. To substantiate this contention, the learned counsel for the appellant relied upon a judgment of this Court reported in **2013 (2) TNMAC-583 [National Insurance Co. Ltd., V. G.Ramesh]**, wherein, it is stated that "Compensation awarded at the rate of Rs.3,000/- per percentage of disability at Rs.81,000/- for 27%. Practice of awarding at Rs.2,000/- per percentage of disability, not correct in view of the present day cost of living". The accident took place in the year 2011, hence, compensation for disability is enhanced at Rs.3,000/- per percentage.

15. With regard to the appellant / Esakkiammal in C.M.A.(MD) No.719 of 2014, it is stated that the income is Rs.6,000/- per month and that multiplier method is to be applied, for 45% disability, **Rs.1,35,000/-** (Rs.3,000/- X 45 = Rs.1,35,000/-) is fixed. It is seen that the appellant, who is a folk dancer sustained fracture in both the legs and considering the nature of injury, and the nature of avocation, the temporary loss of income is fixed at **Rs.60,000/-** (Rs.6,000/- per month) for a period of ten months. For pain and suffering, **Rs.40,000/-**, for extra nourishment, **Rs.5,000/-** and for transport expenses **Rs.5,000/-** is awarded. In total, the appellant/ Esakkiammal is entitled for a sum of Rs.2,45,000/-.

16. The appellant / Muthukumar, in C.M.A.(MD)No.720 of 2014, has sustained 35% disability. For 35% disability, he is entitled for a sum of **Rs.1,05,000/-** (Rs.3,000/- X 35 = Rs.1,05,000/-). It is seen that the appellant sustained fractures in the left leg and considering the nature of injury, the temporary loss of income is fixed at **Rs.48,000/-** for a period of eight months. The appellant is entitled to **Rs.20,000/-**, for pain and suffering, **Rs.5,000/-** is awarded for extra nourishment and **Rs.5,000/-** is awarded, for transport expenses. In total, **Rs.1,83,000/-** is awarded.

17. In the result, these Civil Miscellaneous Appeals are partly allowed. In C.M.A.(MD)No.719 of 2014, the award, dated 18.09.2012, in M.C.O.P.No.274 of 2012, on the file of the Motor Accident Claims Tribunal - IV Additional District Court, Tirunelveli, is enhanced from Rs.58,000/- to **Rs.2,45,000/-**.



18. In C.M.A.(MD)No.720 of 2014, the award, dated 18.09.2012, in M.C.O.P.No.275 of 2012, on the file of the Motor Accident Claims Tribunal - IV Additional District Court, Tirunelveli, is hereby enhanced from Rs.40,500/- to **Rs.1,83,000/-**.

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19. The second respondent/ Insurance Company is directed to deposit Rs.2,45,000/- in M.C.O.P.No.274 of 2012 and Rs.1,83,000/- in M.C.O.P.No.275 of 2012, along with interest at the rate of 7.5% p.a from the date of petition till the date of deposit with cost within a period of eight weeks from the date of receipt of a copy of this judgment, if not already deposited. On such deposit being made, the appellant in C.M.A.(MD)Nos.719 and 720 of 2014/ injured claimants are permitted to withdraw the entire award amount, after deducting amount, if any, already received by them. The appellant / Claimant in both petitions is not entitled for interest for the default period, if there is any default. No Costs.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

Ls

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The Motor Accident Claims Tribunal -
IV Additional District Court, Tirunelveli.

2.The Section Officer,
VR Section,
Madurai Bench of Madras High Court, Madurai. (2 COPIES)

+2 CC to M/s.T. SELVAKUMARAN, Advocate (SR-35229 & 35230[F]
dated 19/11/2021)

+1 CC to M/s.K. MURUGESAN, Advocate (SR-34906[F] dated 18/11/2021)
Judgment made in
C.M.A(MD)Nos.719 and 720 of 2014
18.11.2021

AM(CO)

GC(04.01.2022) 5P 7C

<https://hcservices.ecourts.gov.in/hcservices/>